

STATE OF MICHIGAN
COURT OF APPEALS

SOPHIE TATARIAN,

Petitioner-Appellant,

v

WEST BLOOMFIELD TOWNSHIP,

Respondent-Appellee.

UNPUBLISHED

April 24, 2018

No. 338021

Tax Tribunal

LC No. 2016-005155

Before: MURPHY, P.J., and JANSEN and SWARTZLE, JJ.

PER CURIAM.

Petitioner Sophie Tatarian appeals as of right from the final opinion of the small claims division of the Michigan Tax Tribunal (the Tribunal) determining the True Cash Value (TCV) of two of her properties in West Bloomfield Township, MI. We affirm.

I. TAX ASSESSMENTS

A property tax assessment is based upon the property's TCV. In general, the TCV is synonymous with the property's Fair Market Value (FMV). *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 353; 483 NW2d 416 (1992). A percentage of the TCV may then be assessed for tax purposes. This value is commonly referred to as the property's taxable value.

Assessors use three methods to evaluate a property's TCV. Under the market approach, the property's value is determined by comparing it with values of similar properties. Under the cost-less-depreciation approach, the property's value is a function of the cost it would take to build the property anew minus any depreciation. Under the income approach, the property's value is determined by the potential income that the property can be expected to produce.

II. BACKGROUND

For tax year 2016, respondent West Bloomfield Township assessed the following TCVs on each of petitioner's properties located in the city: \$1,088,380 on petitioner's improved waterfront property at 1593 Gerundecut (the improved property) and \$121,300 on petitioner's vacant waterfront property at 1585 Gerundecut (the vacant property). Both properties have lake frontage on Cass Lake, which is an all-sports lake. Specifically, the improved property has 243 feet of lake frontage, and the vacant property has 44 feet of lake frontage. The improved property also features a 3,301 sq. ft. custom home built in 1992. Petitioner purchased the

improved property at auction for \$564,000 in November 2015. According to petitioner, the improved property was in good condition at the time of purchase and needed only minor cosmetic repairs. Petitioner purchased the vacant property at auction in 2014 for \$13,500 and contends that its only use is for fishing.

Petitioner appealed each assessment to the Tribunal. Petitioner argued that the taxable value of the vacant property should have been \$7,000 because it was an unbuildable wetland property. Petitioner supported this assertion with a 2007 Wetland Determination Report conducted by a wetland scientist employed by respondent's environmental department. That report concluded that the current wetland boundary on the township wetland map was incorrect. According to the report, even though some "upland area" existed on the property, the property functioned as a wildlife habitat and "littoral hydrologic connection" which flooded and appeared to receive runoff and shallow groundwater seepage.

Petitioner also provided a private appraisal of the vacant property to the Tribunal. The appraiser made the "assumption" that the "property is not buildable, due to the presence of wetlands on the property." The appraiser concluded that none of the three generally accepted TCv appraisal approaches were relevant to the property because "there is no ready market for unbuildable land." Instead, the appraiser made a determination of taxable value by comparing the taxable values of five similar unbuildable properties "strained by wetlands." Adjusted for land area, the taxable value of those properties ranged from \$180 to \$7,083 and the appraiser concluded that the taxable value of the vacant property fell near the upper end of that range at \$7,000.

According to petitioner, the TCv of the improved property should have been \$555,000. Petitioner supported her argument with a market-approach analysis in the form of a private real-estate appraisal. The appraiser's report began with an assessment of the neighborhood in which the improved property is located. The appraiser's report noted that the neighborhood around Cass Lake was "built-up" over 75% with stable growth. Although Cass Lake traditionally featured seasonal cottages, custom year-round homes were currently replacing those cottages.

The appraiser's report then highlighted three properties on the same lake as the improved property: two with lake frontage and one on a canal. Several adjustments were made to the comparable property prices, ultimately resulting in a price range of \$555,000 to \$652,000. Notably absent from these adjustments was any adjustment for lake frontage. Petitioner argued that Comparable No. 1 was the most comparable to the subject property because it was in the "immediate vicinity" of the subject property and of similar age and size. That property sold at auction in 2014 for \$523,000 but was resold in 2016 for \$620,000. Although both prices were noted in the appraisal, the earlier lower price was used in petitioner's calculations.

Before the Tribunal, respondent argued that the TCvs of the two properties were actually higher than it had originally assessed, with the TCv of the improved property being \$1,325,042 and the TCv of the vacant property being \$339,504. Respondent supported its proposed TCv for the vacant property with an analysis under the market approach. Respondent presented two comparable properties on Cass Lake with sale prices of \$370,000 and \$875,000 and lake frontage of 51 and 107 feet, respectively. Each property had a building on it at the time of sale, but the purchasers demolished those buildings shortly after the sale was complete. From these

properties, respondent calculated a mean price per foot for lake frontage of \$7,716. Respondent multiplied the mean price by the vacant property's 44 feet of lake frontage to reach a proposed TCV of \$339,504.

Respondent supported its argument regarding the TCV of the improved property with analyses under the market and cost-less-depreciation approaches. Under the market approach, respondent presented four comparable properties with frontage on Cass Lake. After making several adjustments, respondent calculated the selling price of the properties as ranging from \$875,000 to \$1,325,042. Respondent placed the most weight on Comparable No. 2, which sold for an adjusted price of \$1,325,042 in 2014, because that comparable required the fewest adjustments to compare to the improved property. Accordingly, respondent calculated the TCV of the improved property at \$1,325,042 under the market approach. Under the cost-less-depreciation approach, respondent calculated the value of the waterfront land at \$522,174 and calculated the value of respondent's house to be \$566,210 after depreciation. Accordingly, respondent calculated the TCV of the improved property at \$1,088,384 under the cost-less-depreciation approach.

A hearing was held before a Tribunal referee. Petitioner testified that the vacant property is indeed a wetland that is unbuildable, but respondent's representative testified that the cover page of the 2007 Wetland Determination Report, which was not provided to the Tribunal, suggested that petitioner conduct a subsequent wetland survey, have the report updated, and have a grading plan performed. The record makes clear that petitioner did not take any of these steps.

The referee concluded that the TCV of the vacant property was \$339,504. The referee concluded that petitioner's assertion that the vacant property was unbuildable was unreliable in light of the age of the Wetland Determination Report and that, in any event, the vacant property had value simply for its lake access. Similarly, the referee concluded that petitioner's comparison of tax values was unreliable. With respect to the vacant property, the referee noted that, under the law, "the taxable value of . . . properties will vary depending on the number of transfers of ownership," meaning that a comparison of taxable values of other properties does not reliably indicate the taxable value of the subject property. The referee concluded that respondent's analysis, which relied on market values of two vacant properties with frontage on Cass Lake, was reliable. Accordingly, the Tribunal adopted respondent's proposed TCV for the vacant property.

The referee also found unreliable petitioner's analysis regarding the improved property. The referee noted that petitioner claimed that the TCV of the improved property was \$555,000 despite paying \$564,000 for the property one month before the relevant tax date of December 31, 2015. Additionally, the referee was concerned that petitioner's analysis did not account for the property's lake frontage and used a lower 2014 auction sale of a comparable property rather than that property's higher 2016 sale, which was closer in time to the tax date.

The referee found reliable respondent's analysis of the improved property under both the market and cost-less-depreciation approaches. Regarding respondent's market analysis, the referee noted that respondent's comparables were all arms-length sales of properties that were similar in style, quality, square footage, lake frontage, and other amenities to the subject property. Although petitioner argued that respondent's comparables were in a superior location

than the subject property, the referee concluded that petitioner had not provided any evidence supporting that assertion. With regard to respondent's cost-less-depreciation analysis, the referee noted that, according to the Appraisal Institute, the cost-less-depreciation approach was useful when a lack of market activity limits the usefulness of the market approach or "when the improvements are new." The referee found that both of respondent's approaches were reliable indicators of the improved property's value and ultimately concluded that the TCV of the improved property was \$1,088,384.

Petitioner filed exceptions to the referee's conclusions, arguing, among other things, that respondent's comparables were not comparable to the vacant property because they had buildings on them. The Tribunal denied petitioner's exceptions and adopted the proposed judgment of the referee. The Tribunal noted that any improvement on respondent's comparable properties would have been accounted for in the purchase prices of those properties. This appeal followed.

III. ANALYSIS

A. Standards of Review

"This Court's ability to review decisions of the Tax Tribunal is very limited." *President Inn Properties, LLC v City of Grand Rapids*, 291 Mich App 625, 630; 806 NW2d 342 (2011). In the absence of fraud, this Court's review "is limited to determining whether the tribunal made an error of law or adopted a wrong principle." *Id.* at 631 (internal citation and quotation marks omitted). This Court must "accept the tribunal's factual findings as final, provided they are supported by competent, material, and substantial evidence. Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence." *Id.* at 642 (internal citation and quotation marks omitted).

A petitioner challenging an assessment bears the "burden of establishing the property's true cash value." *Forest Hills Co-operative v City of Ann Arbor*, 305 Mich App 572, 588; 854 NW2d 172 (2014). "The burden of proof encompasses both the burden of persuasion, which never shifts during the course of the hearing, and the burden of going forward with evidence, which may shift to the opposing party." *Id.* "In a property tax dispute, the petitioner must prove by the greater weight of the evidence that the disputed assessment was too high on the basis of the Tax Tribunal's findings of true cash value." *Id.*

Proceedings before the Tribunal are original, independent, and de novo. *Great Lakes Div of Nat Steel Corp v City of Ecorse*, 227 Mich App 379, 389; 576 NW2d 667 (1998). Accordingly, the Tribunal "is under a duty to apply its expertise to the facts of a case in order to determine the appropriate method of arriving at the true cash value of property, utilizing an approach that provides the most accurate valuation under the circumstances." *Id.* The "Tribunal may not automatically accept a respondent's assessment in a property-tax proceeding." *Forest Hills*, 305 Mich App at 587. Rather, the Tribunal "has a duty to make its own, independent determination of true cash value." *Great Lakes*, 227 Mich App at 389. This independent determination is not bound by the parties' theories of value. *Id.* at 389-390. The Tribunal "may accept one theory and reject the other, it may reject both theories, or it may utilize a combination of both in arriving at its determination of true cash value," *id.* at 390, so long as

there is evidence on the record that the Tribunal's finding is the usual price for which the subject property would sell, *Meadowlanes Ltd Dividend Housing Ass'n v City of Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991); *President Inn Properties*, 291 Mich App at 641.

B. Property Valuation

The basic principles of property valuation originate from Article 3, § 9 of Michigan's 1963 Constitution. "This section mandates: (1) that the Legislature is to provide a uniform system of real property taxation, (2) that the tax must be assessed on the basis of the true cash value of the property, and (3) that the Legislature is to provide a determination of true cash value." *Meadowlanes*, 437 Mich at 483. The Legislature enacted MCL 211.27(1), which defines TCV to mean "the usual selling price at the place where the property to which the term is applied is at the time of assessment, being the price that could be obtained for the property at private sale." Thus, it is said that TCV is synonymous with FMV. *Jones*, 193 Mich App at 353. Nonetheless, "[t]he rule in Michigan, as in many other states, is that the selling price of a particular piece of property is not conclusive as evidence of the value of that piece of property." *Antisdale v City of Galesburg*, 420 Mich 265, 278; 362 NW2d 632 (1984). Because the Legislature has broadly defined TCV without directing assessors to employ any specific method, "the task of approving or disapproving specific valuation methods or approaches has fallen to the courts." *Meadowlanes*, 437 Mich at 484. "Courts have generally recognized that the three most common approaches to valuation are the capitalization-of-income approach, the sales-comparison or market approach, and the cost-less-depreciation approach." *President Inn Properties*, 291 Mich App at 639 (internal citation and quotation marks omitted).

As recognized by the Supreme Court in *Antisdale*, 420 Mich at 276 n 1, the three approaches have been previously defined by the Michigan State Tax Commission. "The income approach is based on the premise that there is a relation between the income a property can earn and its value. . . . The income approach to value translates the estimated future income of a property into total present value by the use of various data and organized mathematical computations." *Id.* (internal citation and quotation marks omitted). Under the market approach, the valuation of a property "is estimated by comparison with similar properties which have recently been sold or offered for sale in the open market. The principle of substitution is applied, i.e., when property is replaceable, typical buyers will not purchase it at a higher price than those paid for similar properties with comparable locations, characteristics, and future earning capabilities." *Id.* (internal citation and quotation marks omitted). Finally, the cost-less-depreciation approach begins with the "reproduction or replacement cost of the improvements [on the land] developed by comparison with the cost of new improvements, based on current prices of labor and materials for construction of similar improvements." *Id.* (internal citation and quotation marks omitted). Because an older property is, *ceteris paribus*, "less valuable than a similar new property," depreciation is then subtracted from the cost to account for the property's physical deterioration and functional and economic obsolescence. *Id.* (internal citation and quotation marks omitted). "Variations of these approaches and entirely new methods may be useful if found to be accurate and reasonably related to the fair-market value of the subject property." *Meadowlanes*, 437 Mich at 485.

C. Petitioner's Arguments

Substantial Evidence Supported the Tribunal's Valuation of Respondent's Vacant Property. Petitioner contends that the Tribunal erred by concluding that her vacant property had a TCV of \$339,504 and that the TCV of the property is actually only \$7,000. We disagree.

Petitioner first argues that the Tribunal erred by rejecting her Wetland Determination Report and testimony that the vacant property was unbuildable. This Court accepts the Tribunal's factual determinations as final, provided that they are supported by more than a scintilla of evidence on the record. *President Inn Properties*, 291 Mich App at 642. Here, the Wetland Determination Report was nearly ten years old at the time of the Tribunal's determination. Petitioner testified that the property was unbuildable wetlands, but petitioner has not provided any evidence of her relevant expertise in wetlands or property development. The Tribunal received evidence that an additional survey was needed to determine what portion of the property contained wetlands and that petitioner should seek a grading plan. Moreover, the Wetland Determination Report concluded that the "wetland boundary [on petitioner's property] was not correctly indicated on the current Township GIS wetland map." Accordingly, the Wetland Determination Report itself indicates that a contrary authority has determined that more of petitioner's land is non-wetland than petitioner claimed before the Tribunal. Given this apparent contradictory authority, the age of the Wetland Determination Report, and the testimony the Tribunal received regarding the need for additional investigation of the vacant property, we conclude that substantial evidence supports the Tribunal's conclusion that petitioner did not meet her burden to prove that the vacant property was unbuildable.

Next, petitioner argues that the Tribunal erred by rejecting her taxable-value comparison approach in favor of respondent's market approach. A comparison of taxable values is not one of the three common approaches to valuation recognized by the courts of this state. See *Antisdale*, 420 Mich at 276 n 1; *President Inn Properties*, 291 Mich App at 639. Nevertheless, a new valuation approach may be "useful if found to be accurate and reasonably related to the fair-market value of the subject property." *Meadowlanes*, 437 Mich at 485.

Here, petitioner compared the taxable values of several vacant wetland properties to propose a taxable value of \$7,000 for her vacant property. The Tribunal considered this evidence but concluded that comparing taxable values was unreliable because those values could be artificially deflated under the law. This was an application of the Tribunal's relevant expertise in real-estate appraisal that warrants our deference under the substantial-evidence standard. See *Great Lakes Div of Nat Steel Corp*, 227 Mich App at 389.

For its part, respondent used the market approach to arrive at its valuation. Respondent presented two comparable waterfront properties that were purchased with improvements, but whose purchasers quickly demolished those improvements after purchase. Respondent divided the average lake frontage of these properties by the average purchase price to determine an estimated value per foot of lake frontage. Respondent then multiplied that value by the lake frontage of respondent's vacant property to come to its final estimated TCV. The Tribunal concluded that respondent's analysis was the most accurate under the circumstances and that, even assuming petitioner's property was unbuildable, petitioner's property still had value solely for its lake access. Regarding the improvements on the comparable properties presented by

respondent, the Tribunal noted that the demolition costs for those properties would have been accounted for in the sale price.

On appeal, petitioner primarily argues that the Tribunal erred by adopting respondent's analysis because respondent's analysis assumed that petitioner's property was buildable. Because petitioner has not met her burden to prove that the lot was unbuildable, we reject this argument. Petitioner also argues that there was no evidence supporting the Tribunal's conclusion that any demolition costs would have been assumed in the purchase price of the comparable properties. We fail to follow petitioner's argument. The fact that the purchasers of the comparable properties demolished the improvements shortly after purchase is evidence that the purchasers valued the land as unimproved. Therefore, any demolition to the improvements on the property likely represents an additional cost to the purchasers over a comparable vacant property. Therefore, basic economics warrants that the costs needed to demolish the property would actually drive the purchase price down, rather than up. Accordingly, petitioner's argument that the improvements increased the comparable properties' value does not follow from the record evidence.

Finally, petitioner argues that the Tribunal's assertion that petitioner's property had value solely for its lake access is not supported by any record evidence. We agree that no evidence was presented on the record regarding non-buildable waterfront properties, but, under these circumstances, we do not find the lack of evidence problematic. The Tribunal's comment that waterfront property is valuable solely for its lake access is likely an application of the Tribunal's relevant expertise in real-estate appraisal. Moreover, as this Court reads the Tribunal's decision, the Tribunal's observation was not intended to be the sole support for its conclusion, but instead to provide an additional reason why it was adopting respondent's analysis in light of the questions surrounding development of petitioner's property. And, in any event, because petitioner has not met her burden to prove that her property was not buildable, any consideration of property that is not buildable but retains value solely for lake access is irrelevant.

The Tribunal properly credited respondent's well-researched market analysis and determined a TCV for petitioner's vacant property that finds ample support in the record. Therefore, we affirm the Tribunal's final TCV of \$339,504 for petitioner's vacant property.

Substantial Evidence Supported the Tribunal's Valuation of Respondent's Improved Property. Next, petitioner contends that the Tribunal erred by concluding that her improved property had a TCV of \$1,088,380 and that the TCV of the property is actually only \$555,000. We disagree.

Petitioner first argues that the Tribunal erred by adopting respondent's cost-less-depreciation approach to value. According to petitioner, that approach is most suitable for properties for which there is no market or an inadequate or distorted one. Petitioner contends that the comparable properties presented to the Tribunal indicate that there is a ready market for the improved property, thereby rendering the cost-less-depreciation approach inappropriate.

The Tribunal cited texts from the Appraisal Institute that suggested that the cost-less-depreciation approach is useful when "a lack of market activity limits the usefulness of the sales

comparison approach” or “when the improvements are new.” We believe that petitioner’s property falls into both categories.

With regard to market activity, petitioner testified that her improved property went to auction seven times and that she was the highest bidder every time. Petitioner additionally testified that the property was in good repair and only needed a few cosmetic repairs. That this property was sold at auction and that petitioner had repeatedly outbid other potential buyers without making substantial improvements after purchase suggest that the as-is market was limited for the improved property. The character of the neighborhood, featuring mostly custom-built homes, also indicates that the as-is market was limited for the improved property.

Regarding any new improvements, petitioner’s own appraisal indicates that the area was undergoing steady development with traditional cottages being demolished and replaced with custom-built homes. That the area was undergoing a change in character supports the Tribunal’s determination that the cost-less-depreciation approach was appropriate to evaluate respondent’s property. We conclude that substantial evidence supported the Tribunal’s decision to use the cost-less-depreciation approach to evaluate petitioner’s improved property.

In addition, the Tribunal also analyzed petitioner’s improved property under the market approach. With respect to this approach, petitioner argues that her analysis was the better one because her comparable properties were more closely matched with the subject property than respondent’s comparables. Nonetheless, under the substantial-evidence standard, “it does not matter that the contrary position is supported by more evidence, that is, which way the evidence preponderates,” *McBride v Pontiac Sch Dist*, 218 Mich App 113, 123; 553 NW2d 646 (1996), but only that the position adopted by the Tribunal is supported by more than a scintilla of evidence on the record, *President Inn Properties*, 291 Mich App at 642.

Here, respondent presented four properties that, according to the Tribunal, compared to the subject property in location, style, quality, square footage, and amenities. The Tribunal credited respondent’s comparables as being arms-length transactions, while criticizing one of petitioner’s comparables as being an auction sale. The Tribunal noted that petitioner claimed that the TCV of the improved property as of the relevant tax day was less than what she paid for the property one month prior. Additionally, the Tribunal criticized petitioner’s appraisal for using the 2014 price of Comparable No. 1 instead of the higher 2016 sale of that property, which was closer in time to the relevant tax date.

On appeal, petitioner points out that the 2016 sale occurred after respondent’s initial assessment of petitioner’s property. Nonetheless, because this sale was noted in petitioner’s appraisal, it is clear petitioner’s appraiser was aware of it. Petitioner has provided this Court with no evidence suggesting that the Tribunal may not consider sales after the date of assessment. Indeed, because the goal of any TCV analysis is to determine the most-accurate value of the property as of the relevant tax day, post-assessment sales remain relevant.

The Tribunal also noted that petitioner’s market analysis was unreliable because it failed to include any analysis of lake frontage. On appeal, petitioner argues that evidence of the properties’ lake frontages was available in the record for the Tribunal to consider. Yet, it is generally the role of the moving party—not the adjudicator—to bring forth evidence. See

Wilson v Taylor, 457 Mich 232, 243; 577 NW2d 100 (1998). In no way does the availability of the evidence elsewhere in the record excuse petitioner’s failure to account for lake frontage in her market analysis of the improved property. On an all-sports lake surrounded by custom-built homes—one in which purchasers value lake frontage so much that they will buy improved lakefront properties with the intention of demolishing the structures—we agree with the Tribunal that petitioner’s failure to account for lake frontage renders her analysis suspect. Indeed, petitioner’s own purchase of vacant—and allegedly unbuildable—lakefront property indicates that lake frontage was a characteristic that warranted serious consideration in petitioner’s analysis.

Lastly, petitioner argues on appeal, as she did before the Tribunal, that respondent’s analysis was unreliable because respondent’s comparables were located in a “premiere” area. Yet, petitioner failed to provide any support for this assertion. Petitioner provided no analysis of what makes an area “premiere.” “It is not sufficient for a party simply to announce a position . . . and then leave it up to this Court to discover and rationalize the basis of his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position.” *Id.* Accordingly, petitioner’s argument is without merit.

We conclude that the Tribunal properly credited respondent’s well-researched market and cost-less-depreciation analyses and determined a TCV for petitioner’s improved property that is supported by substantial evidence on the record. Therefore, we affirm the Tribunal’s final TCV of \$1,088,380 for petitioner’s improved property.

/s/ William B. Murphy
/s/ Kathleen Jansen
/s/ Brock A. Swartzle